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(c) Copies of this form and the instructions thereto can be obtained from the Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

[57 FR 4703, Feb. 7, 1992]

### Subpart E—Tender Offers

#### § 335.501 Scope and definitions applicable to subpart E (the “tender offer regulations”).

(a) *Scope.* Subpart E (the *tender offer regulations*) shall apply to any tender offer which is subject to section 14(d)(1) of the Act, including, but not limited to, any tender offer for securities of a class described in that section which is made by an affiliate of the bank issuer of such class.

(b) *Definitions.* Unless the context otherwise requires, all terms used in the tender offer regulations have the same meaning as in the Act and in § 335.102. In addition, for purposes of section 14(d) of the Act and the tender offer regulations, the following definitions apply:

(1) The term *bidder* means any person who makes a tender offer or on whose behalf a tender offer is made: *Provided, however,* That the term does not include a bank which makes a tender offer for securities of any class of which it is the issuer.

(2) The term *subject bank* means any issuer of securities which are sought by a bidder pursuant to a tender offer.

(3) The term *security holders* means holders of record and beneficial owners of securities which are the subject of a tender offer.

(4) The term *beneficial owner* shall have the same meaning as that set forth in § 335.403: *Provided, however,* That, except with respect to §§ 335.503 and 335.509(d) and item 6 of Form F-13, the term shall not include a person who does not have or share investment power or who is deemed to be a beneficial owner by virtue of § 335.403(d)(1).

(5) The term *tender offer material* means:

(i) The bidder's formal offer, including all the material terms and conditions of the tender offer and all amendments thereto;

(ii) The related transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository) and all amendments thereto; and

(iii) Press releases, advertisements, letters and other documents published by the bidder or sent or given by the bidder to security holders which, directly or indirectly, solicit, invite or request tenders of the securities being sought in the tender offer.

(6) The term *executive officer* means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) or any other person who performs similar policy making functions for a corporation.

(7) The term *business day* means any day, other than Saturday, Sunday or a Federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time. In computing any time period under section 14(d)(5) or section 14(d)(6) of the Act or under these tender offer regulations the date of the event which begins the running of such time period shall be included *except that* if such event occurs on other than a business day such period shall begin to run on and shall include the first business day thereafter.

(8) The term *security position listing* means, with respect to securities of any issuer held by a registered clearing

agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

**§ 335.502 Date of commencement of a tender offer.**

(a) *Commencement.* A tender offer shall commence for the purposes of section 14(d) of the Act and the rules promulgated thereunder at 12:01 a.m. on the date when the first of the following events occurs:

(1) The long form publication of the tender offer is first published by the bidder under § 335.504(a)(1);

(2) The summary advertisement of the tender offer is first published by the bidder under § 335.504(a)(2);

(3) The summary advertisement or the long form publication of the tender offer is first published by the bidder under § 335.504(a)(3);

(4) Definitive copies of a tender offer, in which the consideration offered by the bidder consists of securities registered under the Securities Act of 1933 (15 U.S.C. 77), are first published or sent or given by the bidder to security holders; or

(5) The tender offer is first published or sent or given to security holders by the bidder by any means not otherwise referred to in paragraphs (a) (1) through (4) of this section.

(b) *Public announcement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which includes the information in paragraph (c) of this section with respect to a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77) shall be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section *except that* such tender offer shall not be deemed to be first published or sent or given to security holders by the bidder under paragraph (a)(5) of this section on the date of such public announcement if within five business days of such public announcement, the bidder either:

(1) Makes a subsequent public announcement stating that the bidder has determined not to continue with such tender offer, in which event paragraph (a)(5) of this section shall not apply to the initial public announcement; or

(2) Complies with § 335.503(a) and contemporaneously disseminates the disclosure required by § 335.506 to security holders under § 335.504 or otherwise in which event:

(i) The date of commencement of such tender offer under paragraph (a) of this section will be determined by the date on which information required by § 335.506 is first published or sent or given to security holders under § 335.504 or otherwise; and

(ii) Notwithstanding the preceding paragraph, section 14(d)(7) of the Act shall be deemed to apply to such tender offer from the date of such public announcement.

(c) *Information.* The information referred to in paragraph (b) of this section is as follows:

(1) The identity of the bidder;

(2) The identity of the subject bank; and

(3) The amount and class of securities being sought and the price or range of prices being offered therefor.

(d) *Announcements not resulting in commencement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which only discloses the information in paragraphs (d) (1) through (3) of this section concerning a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77) shall not be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section.

(1) The identity of the bidder;

(2) The identity of the subject bank; and

(3) A statement that the bidder intends to make a tender offer in the future for a class of equity securities of the subject bank which statement does not specify the amount of securities of such class to be sought or the consideration to be offered therefor.

(e) *Announcement made under SEC Rule 135.* A public announcement by a